Supreme Court, U.S.
FILED
JUN 9 - 2010
OFFICE OF THE CLERK

No. 09-1361

IN THE
Supreme Court of the United States

CITY OF RENO, RYAN ASHTON, AND DAVID ROBERTSON,

Petitioners,

v.

CHARLA AND DUSTIN CONN,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

BRIEF OF *AMICI CURIAE* INTERNATIONAL MUNICIPAL LAWYERS ASSOCIATION, NATIONAL LEAGUE OF CITIES & NATIONAL ASSOCIATION OF COUNTIES IN SUPPORT OF PETITIONER

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STATEMENT OF INTEREST[1]

Amicus curiae the International Municipal Lawyers Association ("IMLA") is a non-profit, non-partisan, professional organization consisting of more than 3,500 members that has been serving local government attorneys since 1935. The membership is comprised of local government entities, including cities and counties, and subdivisions thereof, as represented by their chief legal officers; state municipal leagues; and individual attorneys who represent municipalities, counties, and other local government entities. Since its establishment, IMLA has advocated for the rights and privileges of local governments and the attorneys who represent them. IMLA has appeared as amicus curiae on behalf of its members before the United States Supreme Court, in the United States Courts of Appeals, and in state supreme and appellate courts.

Amicus curiae the National League of Cities ("NLC") is the oldest and largest organization representing municipal governments throughout the United States. Its mission is to strengthen and promote cities as centers of opportunity, leadership, and governance. Working in partnership with 49 State municipal leagues, NLC serves as a national

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[1] Pursuant to Supreme Court Rule 37.6, counsel for *amici* certify that no counsel for a party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than *amici* made such a monetary contribution. Letters from the parties consenting to the filing of this *amicus* brief have been filed with the Clerk of the Court.

advocate for the more than 19,000 cities, villages, and towns it represents.

Amicus curiae the National Association of Counties ("NACo") is the only national organization that represents county governments in the United States. Founded in 1935, NACo provides ssential services to the nation's 3,068 counties. NACo advances issues with a unified voice before the federal government, improves the public's understanding of county government, and assists counties in finding and sharing innovative solutions through education and research.

In their petition for certiorari, Petitioners have demonstrated in detail the error of the Ninth Circuit's ruling and analyzed the conflicts of authority justifying this Court's intervention. Pet. 17-39. *Amici* agree with Petitioners that the circuit split regarding the purported duty of municipalities to train law enforcement officers to diagnose suicidal tendencies is ripe for resolution by the Court. Petitioners are also correct in their legal analysis of the 42 U.S.C. § 1983 deliberate indifference standard: diagnosing suicidal ideation is not within the scope of a law enforcement officer's regular and foreseeable duties, and it was not deliberate indifference on the part of the city of Reno to determine that licensed medical professionals should be the ones to diagnose a detainee's tendency to commit suicide.

IMLA, NLC, and NACo offer this brief as *amici curiae* to emphasize to the Court the importance of its granting the requested writ and reversing the erroneous ruling of the Ninth Circuit for three

reasons: (1) the Court must resolve the split among the circuits to give clearer guidance to municipalities on the constitutional requirements of law-enforcement training; (2) the Ninth Circuit's ruling should not be allowed to stand, because the resultant broadening of *City of Canton v. Harris*, 489 U.S. 378 (1989), would place a grave economic burden on struggling municipalities and impose the will of the federal courts over decisions best made by democratically elected state and local officials; and (3) broadening *Harris* to require training of law enforcement officers to diagnose suicidal tendencies will divert training resources, detract from the officers' primary duties, and stray into areas that are and should be the province of medical professionals.

SUMMARY OF ARGUMENT

In the decision below, the Ninth Circuit, over the strong dissent of seven of its judges, has joined the minority side of a five-to-two inter-circuit split regarding whether municipalities may be held liable under 42 U.S.C. § 1983 for failure to train law enforcement officers to diagnose the suicidal tendencies of detainees. By solidifying that split in authority, the Ninth Circuit has further complicated the legal landscape and made it more difficult for municipalities to know how to proceed in training their law enforcement officers. *Amici* ask the Court to grant certiorari in this case to resolve the split and thus provide definitive guidance to municipalities in their efforts to establish constitutionally sufficient training programs.

Further, the Ninth Circuit's decision to expand the reach of *Harris* places an insupportable burden on municipalities to provide additional and expensive specialized training to their law enforcement officers. The Court should not constitutionalize a suicide-risk training requirement during these difficult economic times, when municipalities are facing significant budget shortfalls and the restriction of already stretched resources. One of the consequences of the Ninth Circuit's ruling below is to force municipalities to allocate their limited funds as the courts, rather than democratically elected local officials, see fit.

Finally, the ruling below will force municipalities to divert the training of law enforcement officers, rendering them less effective in the most important aspects of their duties. The city of Reno and most other municipalities have medical screening procedures already in place and staffed by personnel properly trained to diagnose suicidal ideation. Requiring law enforcement officers to add psychiatric diagnoses to their more traditional duties of protecting their communities and enforcing the law will only serve to undermine the services those officers have been hired to provide.

ARGUMENT

I. The Ninth Circuit's Decision Below Places An Insupportable Burden On Municipalities To Ensure That Law Enforcement Officers Are Equipped To Make Medical Diagnoses of Suicidal Tendencies.

A. The Split Among The United States Courts Of Appeals Provides No Clear Guidance To Municipalities On The Kind Of Training To Provide To Law Enforcement Officers To Meet Legal Standards.

As Petitioners have pointed out, the United States Courts of Appeals are divided over the issue of whether law enforcement officers must be trained to diagnose suicidal ideation in detainees. The First, Fifth, Sixth, Seventh, and Eleventh Circuits have all ruled that it is not deliberate indifference for a police officer not to diagnose and report the suicidal tendencies of detainees. *See Estate of Boncher v. Brown County*, 272 F.3d 484, 485-86 (7th Cir. 2001); *Manarite v. City of Springfield*, 957 F.2d 953, 959-60 (1st Cir. 1992); *Barber v. City of Salem*, 953 F.2d 232, 240 (6th Cir. 1992); *Popham v. City of Talladega*, 908 F.2d 1561, 1564 (11th Cir. 1990); *Burns v. City of Galveston*, 905 F.2d 100, 104 (5th Cir. 1990). In each of these cases, like in the case below, officers were faced with intoxicated detainees who ultimately committed suicide, but each court concluded that the officers' constitutional duties did not include diagnosing the suicidal tendencies of the detainees.

The Ninth Circuit's decision to join the minority view of the Third Circuit only widens and solidifies the split. *See Simmons v. City of Philadelphia*, 947 F.2d 1042, 1049 (3d Cir. 1991). The ruling throws municipalities across the country into confusion regarding the constitutional requirements for training their law enforcement officers. The split in authority makes it impossible for municipalities to know precisely how expansive to make their law-enforcement training and just how much expanding the training will cost them. *Amici* ask this Court to grant certiorari to resolve this issue regarding police training and provide definitive guidance to state and local governments.

B. This Court's Resolution Of The Question Presented Is Important In Light Of The Fiscal Challenges Municipalities Face.

This Court's resolution of the question presented is particularly critical given the financial straits in which many municipalities operate. The global economic downturn since 2008 has caused especially significant financial harm to local governments. Eighty-eight percent of city finance officers reported that in 2009 they were less able to meet their fiscal needs than they were in 2008, as sales tax and general fund revenues fall. *See* CHRISTOPHER W. HOENE & MICHAEL A. PAGANO, NAT'L LEAGUE OF CITIES, CITY FISCAL CONDITIONS IN 2009, 1, 3 (Sept. 2009).

More troubling for local governments is the nearly unprecedented decline in the real-estate market.

Local governments are largely dependent on property tax revenue. Because of the delay in appraised values leading to reduced tax collections, the full extent of the bursting of the real-estate bubble has not yet been felt and may cause even greater economic havoc in 2010, 2011, and 2012. *Id.* at 3.

Large cities such as Chicago and San Francisco are facing budget shortfalls in excess of $500 million, while smaller cities such as Bossier City, Louisiana, have thirteen-percent shortfalls and face cutting equivalent percentages of city positions. Alan Greenblatt, *Local Squeeze: The Budget Pain Felt by State Lawmakers for the Past Two Years Has Made Its Way to Cities and Counties*, National Conference of State Legislatures (May 2010), *available at* http://www.ncsl.org/?tabid=20180.

Amicus NACo conducted a survey of counties to gauge the continuing impact of the economic downturn on a sample of counties across the country. *See* Jacqueline J. Byers, *How Are Counties Doing? An Economic Survey*, National Association of Counties (Nov. 2009), *available at* http://www.naco.org/Template.cfm?Section=Surveys&template=/ContentManagement/ContentDisplay.cfm&ContentID=32326. According to the survey, fifty-six percent of counties report starting their fiscal years with up to $10 million projected shortfalls. *Id.* at 3. Forty-seven percent stated that their shortfall increased after the beginning of the fiscal year, with those additional shortfalls nearing $10 million. *Id.* These shortfalls have been produced by a decrease in the traditional revenue streams from property taxes, state and federal funding, and sales taxes. Eighty-

two percent of these counties anticipate the shortfalls extending into the next fiscal year. *Id.* Counties, like cities, are dealing with the economic turmoil by slashing their budgets and shuffling their resources.

Although local governments often cut police and public safety funding only as a last resort, the current economic difficulties have forced them to make such cuts. In Pennsylvania, nineteen suburban and rural police agencies closed over a fifteen-month period ending in May 2009, and seven others cut patrols; in Minnesota, nine small police agencies closed in a five-month period. Kevin Johnson, *Economy Limiting Services of Police*, USA TODAY, May 18, 2009, at 01A. The problem is not limited to small or rural communities: if adopted, the New York Governor's 2011 proposed state budget cuts would lead to the layoffs of over 3,000 New York City police officers. CITY OF NEW YORK OFFICE OF MANAGEMENT AND BUDGET, FINANCIAL PLAN SUMMARY FISCAL YEARS 2010-2014 23 (Jan. 28, 2010), *available at* http://www.nyc.gov/html/omb/downloads/pdf/sum1_10.pdf.

Police-training budgets in particular are facing drastic cuts. Even the city of Reno cut its police-training budget by more than twenty percent between fiscal years 2008/2009 and 2009/2010, from $1.69 million to $1.35 million. CITY OF RENO, NEVADA 2009/10 BUDGET III-245 (May 22, 2009), *available at* http://www.reno.gov/index.aspx?page=171. Reno is not alone in the need to reduce police-training budgets: the state of Minnesota has decreased its police-training reimbursement rate from $423 per officer per year in 2003 to $341 per officer per year in

2010, a reduction of almost twenty percent, not taking into account inflation. Kari Petrie, *Tighter Budgets Make Police Training an Issue*, ST. CLOUD TIMES, Mar. 8, 2010, *available at* http://minnesota.publicradio.org/display/web/2010/03/08/police-training. Local law enforcement agencies are already stretched thin. Before municipalities allocate scarce resources to comply with the Ninth Circuit's erroneous ruling, this Court should resolve the conflict in authority.

C. The Decision Below Represents Inappropriate Judicial Interference With The Effective Deployment Of Resources By Municipalities.

In his dissent to the opinion below, Chief Judge Kozinski warns that the majority opinion represents "unprecedented judicial interference in our local institutions." *Conn v. City of Reno*, 591 F.3d 1081, 1085 (9th Cir. 2010) (Kozinski, J., dissenting). Deployment of limited local resources is an undertaking best conducted by the people closest to and with the most knowledge of those resources and the needs of the local community. Kozinski's dissent recognizes that "any redefinition of the role of the state should occur under the supervision of democratically elected officials, not unaccountable federal judges." *Id.*

This Court, in the opinion that the Ninth Circuit seeks to widen with its ruling in *Conn*, cautioned against the danger presented by increased judicial scrutiny over the training programs of law enforcement officers to the autonomy of

municipalities, as well as to the principles of federalism. The Court in *Harris* narrowed its holding to avoid retrospective judicial evaluation of police-training programs precisely because "[i]t would also engage the federal courts in an endless exercise of second-guessing municipal employee-training programs." *Harris*, 489 U.S. at 392. This kind of second-guessing "the federal courts are ill suited to undertake, as well as [being] one that would implicate serious questions of federalism." *Id.*

More recently, this Court has expressed sustained concern over the financial impact of federal requirements imposed upon state and local governments, precisely the kind of impact that will result from the Ninth Circuit's ruling. In *Horne v. Flores*, the Court acknowledged that "[s]tates and local governments have limited funds. When a federal court orders that money be appropriated for one program, the effect is often to take funds away from other important programs." 129 S. Ct. 2579, 2594 (2009). While *Horne* involved federal requirements for state education spending, the Court has articulated the same concerns in other contexts, such as when state and local governments are ordered to pay exorbitant awards of attorneys' fees pursuant to § 1983 litigation. *See Perdue v. Kenny A.*, 130 S. Ct. 1662, 1677 (2010) ("[S]tate and local governments have limited budgets, [and] money that is used to pay attorneys' fees is money that cannot be used for programs that provide vital public services.").

In the instant case, the Ninth Circuit's ruling, if affirmed, would impose substantial financial burdens

on already cash-strapped municipalities. As of 2004, there were almost 780,000 sworn personnel with general arrest powers employed by state and local law enforcement agencies, and the vast majority of these personnel were employed by local police departments or sheriff departments. BRIAN A. REAVES, BUREAU OF JUSTICE STATISTICS BULLETIN, U.S. DEP'T OF JUSTICE, CENSUS OF STATE AND LOCAL LAW ENFORCEMENT AGENCIES, 2004 1, 2 (June 2007), *available at* http://bjs.ojp.usdoj.gov/content/pub/pdf/csllea04.pdf.[22] Training all of these officers to diagnose suicidal ideation would impose huge costs on municipalities that would not be borne by the federal government despite being mandated by a federal court. As this Court recognized in *Horne* and *Kenny A.*, any such training requirement would only mean that other important legal programs would receive less funding. The Court should grant certiorari to resolve this issue and prevent the imposition of unnecessary police-training costs on and unwarranted judicial interference with local governments.

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[22] Data from 2006 indicates a total of 919,274 total officers (685,611 of them with general arrest powers), 90% of whom were employed by local police and sheriff departments. *See* SOURCEBOOK OF CRIMINAL JUSTICE STATISTICS ONLINE (2006) *available at* http://www.albany.edu/sourcebook/pdf/t1262006.pdf.

II. The Ninth Circuit's Decision Below Threatens To Divert The Training Of Law Enforcement Officers, Thus Making Them Less Effective In Their Primary Duties.

A. Burdening Law Enforcement Officers With Diagnosis Of Psychological Conditions Will Detract From Their Training In Their Primary Law Enforcement Duties.

One of the more troubling consequences of the Ninth Circuit's ruling below is the burden it will place upon law enforcement officers as they train to serve their role as protectors of our communities. Most states have Peace Officer Standards and Training ("POST") organizations that establish requirements for the training of law enforcement officers. The POSTs set the curricula for the mandatory minimum basic training that usually takes place in academies for new officers and for the continuing in-service education requirements that officers must satisfy throughout their careers.[3]

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[3] Nearly all states have websites devoted to their POSTs, where training standards can be reviewed. *See, e.g.*, http://www.azpost.state.az.us/; http://www.post.ca.gov/; http://www.gapost.org/; http://www.idaho-post.org/; http://www.cole.state.la.us/programs/post.asp; http://www.dps.state.mn.us/newpost/posthome.asp; http://post.state.nv.us/; http://publicsafety.utah.gov/post/index.html; http://attorneygeneral.state.wy.us/post.htm.

In Nevada, in particular, the minimum standards for all law enforcement officers are dictated by state regulation. *See* Nev. Admin. Code § 289.300 (2007). Basic training for law enforcement officials includes 480 hours of mandatory training in several subject areas. Nev. Admin. Code § 289.140 (2008). Of Law and Legal Procedures, officers-in-training must learn civil liability, constitutional law, crimes against persons, crimes against property, juvenile law, laws governing coroners, laws relating to arrests, laws relating to drugs, miscellaneous crimes, probable cause, rights of victims, search and seizure, traffic laws, and use of force. *Id.* Officers must also study Patrol Operations and Investigations, including issues pertaining to the abuse of elderly persons, accident investigations, basic patrol procedures, child abuse and sexual abuse of children, domestic abuse and stalking, investigation of crime scenes, collection and preservation of evidence, fingerprinting, principles of investigation, techniques of interviewing and interrogation, DWI detection and standardized field sobriety testing, and unknown-risk and high-risk vehicle stops. *Id.*

The third general area of study is Performance Skills, including health, fitness and wellness, interpersonal communications, tactics for the arrest and control of suspects, methods for arrest, the use of less-than-lethal weapons, operation of emergency vehicles, provision of emergency first aid and CPR, searching of buildings, training in the use of firearms, and writing of reports. *Id.* Finally, basic training also includes The Functions of a Police Officer, specifically care of persons in custody, community policing, counter-terrorism and weapons of mass

destruction, courtroom demeanor, the giving of testimony, crisis intervention, ethics in law enforcement, handling of persons who are mentally ill, history and principles of law enforcement, management of stress, National Crime Information Center procedures, survival of peace officers, systems of criminal justice, and the realities of law enforcement. *Id.* Basic training concludes with the requirement to pass both the state police certification examination and a physical fitness examination. *Id.*

After an officer in Nevada has completed basic training and has been certified by the state, he or she must annually thereafter complete twenty-four hours of additional training. Nev. Admin. Code § 289.230 (2008). Part of this additional training includes biannual firearms and other weapons certification, defensive tactics, handling of suspects, and reviewing the policies of the officer's employing agency. *Id.*

Other states follow similar curricula and require a similar number of hours of training. *See, e.g.*, VIRGINIA DEP'T OF CRIMINAL JUSTICE SERVICES, PERFORMANCE OUTCOMES, TRAINING OBJECTIVES, CRITERIA, AND LESSON PLAN GUIDES FOR COMPULSORY MINIMUM TRAINING FOR LAW ENFORCEMENT OFFICERS, (2009), *available at* http://www.dcjs.virginia.gov/standardsTraining/compulsoryMinimumTraining/officers.cfm. At a minimum, law enforcement officers throughout the country must be trained in the substantive laws they are enforcing, techniques for investigation and solving crime, standards for handling suspects and detainees, use of weapons and other types of force, interpersonal

and community interaction, and the constitutional limits to their actions, among other subjects.

To add another level of training as advanced and specialized as the psychiatric diagnosis of mental illness or suicidal ideation would detract from the training that allows them to serve and protect their communities in a safe, professional, and effective manner.

This Court recognized in *Harris* the multiple areas of training law enforcement officers must master to serve their important role in society. *Harris* considered cases that addressed police training in just a few areas, including the proper force for arrests, detention, interrogation, obtaining and executing warrants, and searching detainees. *See Harris*, 489 U.S. at 383 n.3, 387 n.6. The Court should heed Chief Judge Kozinski's warning that "[a]s police devote time and energy to judicially-imposed obligations, they will have less time and attention to devote to preventing crime, protecting their own safety, and avoiding other types of constitutional violations." *Conn*, 591 F.3d at 1089 (Kozinski, J., dissenting).

B. Burdening Law Enforcement Officers With Identification Of Suicidal Ideation Is Unnecessary When The Detainee Will Be Evaluated By Medical Professionals.

Chief Judge Kozinski's dissent to the Ninth Circuit's ruling points out the danger of the kind of diversion of resources that *amici* wish this Court to

prevent. If the Ninth Circuit's ruling is allowed to stand, "Judges will henceforth micromanage the police, who in turn will serve as mental health professionals." *Id.* at 1085 (Kozinski, J., dissenting). Mental health professionals are specially trained and licensed to diagnose and treat the kinds of psychological disorders that lead to suicide attempts. Although a police officer or layperson may at times be able to recognize that a person is at risk to attempt suicide, this Court should not make it a law enforcement officer's constitutional duty to make a diagnosis best left to licensed health-care professionals.

The decision below details that the Reno Police Department and the Washoe County Jail both had systems in place to allow detainees to receive medical attention when needed and to require each detainee to receive a medical screening by professionals trained in recognizing and addressing psychological symptoms that might lead to suicide. *Id.* at 1091-1093. Chief Judge Kozinski provided further detail regarding the multiple medical screenings Brenda Clutska herself received from Reno and Washoe County medical professionals:

> Right before her arrest, Clutska was evaluated by a team of medics. At intake, she was examined by a nurse who received annual training in suicide prevention. She was then held in a detoxification cell that was regularly monitored by jail staff and nurses. After discharge, she was arrested a second time and brought

> by police to an emergency room, where she was seen by a physician. And when she was arrested a third time, she was booked into the mental health unit of the jail, which is managed by a licensed social worker and staffed around the clock.

Id. at 1087 (Kozinski, J., dissenting). As both the majority and dissenting opinions make apparent, Reno and Washoe County had many procedures in place to provide the grossly intoxicated Clutska with medical and psychiatric screenings warranted by her behavior and condition. Having more extremely specialized training for its law enforcement officers would not have prevented the unfortunate outcome in this case, would serve only to diminish the officers' training in the more crucial aspects of their duty, and most importantly, is not required by the Constitution.

CONCLUSION

For all the foregoing reasons, the petition for writ of certiorari should be granted.

Respectfully submitted,

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June 9, 2010